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April 6, 2018

VIA E-FILING

Jocelyn Boyd, Esquire
Chief Clerk of the Commission
SC Public Service Commission
P. O. Drawer 11649
Columbia, SC 29211

RE: Request of the South Carolina Office of Regulatory Staff For Rate
Relief to SCE&G Rates Pursuant to S.C. Code Ann. § 58-27-290
Docket No. 2017-305-E

Dear Ms. Boyd:

Enclosed please find for filing South Carolina Energy Users Committee ("SCEUC") Notice of Motion and Motion with Exhibits in the above-captioned matter. By copy of this letter, I am serving all parties of record.

If you have questions, please do not hesitate to contact me.

Sincerely,

ELLIOTT & ELLIOTT, P.A.

Scott Elliott

SE/mlw

Enclosure

cc: All parties of record (w/encl.) (via email)

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TO: COUNSEL FOR SOUTH CAROLINA ELECTRIC AND GAS.

The facts upon which this motion for pendente lite relief are as follows.

- 1

\$2 billion in costs from its ratepayers for failed nuclear plants. The nuclear construction costs charged SCE&G's customers equal 18% of ratepayers' bills.

3. The evidence adduced in the proceedings to date before the Commission reflects that the nuclear construction costs provide no benefit to the ratepayer and substantial evidence exists demonstrating the imprudence of these costs. Moreover, substantial evidence exists demonstrating that Commission orders authorizing recovery of revised rates pursuant to the BLRA were the result of irregularities.

4. On September 26, 2017, the South Carolina Office of Regulatory Staff ("ORS") filed its request for rate relief seeking an order of the Commission reducing SCE&G's rates by eighteen (18) percent. Approximately fifteen parties, including SCEUC, have intervened in the docket and have joined in the ORS request for rate reduction. A final hearing in this docket has yet to be set by the Commission.

5. On January 19, 2018, the ORS filed its financial examination of SCE&G with the Commission in which bankruptcy legal counsel Julio E. ("Rick") Mendoza, Jr. rendered his expert opinion that SCE&G would probably not file for bankruptcy as a result of the elimination of the eighteen (18) percent charge. A copy of the memorandum opinion of Mr. Mendoza is attached hereto and incorporated herein as Exhibit 1.

6. On March 30, 2018, the ORS filed a copy of the BatesWhite Economic Consulting preliminary analysis of an interim reduction in SCE&G rates dated March 22, 2018. The BatesWhite report, commissioned by the South Carolina State Senate, concluded that SCE&G could absorb an interim rate reduction of thirteen (13) to eighteen (18) percent by reducing its dividends by \$319 million, the actual amount of dividends paid by SCE&G to SCANA in 2017. Further, the BatesWhite Economic Consulting report opines that a rate

reduction of thirteen (13) to eighteen (18) percent would not diminish the credit standing of SCE&G or its parent, SCANA. A copy of the BatesWhite Economic Consulting report is attached hereto and incorporated by reference as Exhibit B.

ARGUMENT

The intervenor and SCE&G's ratepayers are entitled to pendente lite relief in connection with the ORS petition to reduce SCE&G's rates.

SCE&G's customer base of approximately 700,000 customers is continuously in a state of transition. SCE&G opens new accounts for new customers and closes accounts when customers leave the service territory, close a business, upon the death of a customer, or for failure to pay bills. As a consequence, many of SCE&G's current ratepayers may no longer be customers at the time the Commission may order relief in this docket and have no adequate and complete remedy at law. In addition, existing ratepayers have lost and will continue to lose the time and value of those amounts paid to SCE&G in excessive rates during the pendency of this action, and the Commission's failure to act expeditiously on the ORS petition herein deprives these ratepayers of a remedy at law.

For a showing of entitlement to pendente lite relief, a party must show that the facts before the Commission appear to be sufficient to constitute a cause of action for relief, and on the entire showing, from both sides, it must appear in view of all the circumstances that the injunction is reasonably necessary to protect the legal rights of the party pending the litigation.

Transcontinental Gas Pipe Line Corporation v. Porter, 252 S.C. 478, 167 S.E. 2d 313 (1969).

If the relief requested, or any part thereof, consists of restraining the commission or continuance of some act, the commission or continuance of which, during the litigation would produce injury

to the party, a temporary injunction should be issued. *Columbia Broadcasting System, Inc. v. Custom Recording Company, Inc.*, 258 S.C. 465, 189 S.E.2d 305 (1972).

When a prima facie showing has been made entitling a party to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits. *Transcontinental Gas Pipe Line Corporation v. Porter, Childs v. Columbia*, 87 S.C. 566, 70 S.E. 296 (1911). By Order No. 2017-769, the Commission denied SCE&G's motion to dismiss the ORS petition for rate reduction. By Order No. 2018-102 and Order No. 2018-81, the Commission requested the ORS to supplement its evidentiary showing in support of its petition to reduce rates. The Commission has denied SCE&G's motion to dismiss and has requested further evidentiary showing. The ORS petition makes out a prima facie case for rate reduction.

Moreover, the intervenors in this docket have no adequate and complete remedy at law. *Knohl v. Duke Power Company*, 260 S.C. 374, 196 S.E.2d 115 (1973). Were the Commission to fail to act to reduce rates pendente lite, untold numbers of SCE&G's customers who will have terminated service will be deprived of a rate reduction. In addition, those customers who will have paid SCE&G's rates throughout the construction of the failed nuclear plants and the proceedings herein, will have lost the benefit of the amounts paid for excessive charges. In enacting S.C. Code Section 58-27-920 the General Assembly recognized the need to provide rate payers with a timely remedy for unfair or unreasonable rates. However, this docket has been open for six months and the Commission has not chosen to act to reduce rates pursuant to S.C. Code Section 58-27-920 leaving SCE&G's customers without an adequate and complete remedy at law.

On September 26, 2017, the South Carolina Attorney General issued his opinion that the Base Load Review Act under which SCE&G is charging its customers \$37 million per month is of questionable constitutionality. The Attorney General opined:

It cannot be in the “public interest” to charge ratepayers for capital costs of an unfinished and abandoned plant. It cannot be in the “public interest” to charge customers in order to pay stockholders an exorbitant rate of return. It is not in the “public interest” to increase the power bills of consumers who receive nothing in return, essentially charging them twice. Thus, we believe that Art. IX, § 1 renders the abandonment provision, as well as the other BLRA provisions discussed herein, to be constitutionally suspect. SC Attorney General’s opinion dated September 26, 2017 at p. 57.

The South Carolina Senate expert BatesWhite Economic Consulting opines that SCE&G could withstand a reduction in rates of thirteen (13) percent to eighteen (18) percent (BatesWhite Economic Consulting report, page 54). Mr. Mendoza, the ORS bankruptcy expert, opines that a reduction in rates of eighteen (18) percent would probably not force SCE&G into bankruptcy (Mendoza January 18, 2018 memorandum opinion at page 3). While the BatesWhite Economic Consulting report acknowledges that SCE&G will have to tighten its belt and SCANA, SCE&G’s parent, may have to reduce dividends, SCANA’s shareholders have enjoyed a windfall from the failed nuclear construction.. The record reflects that SCANA has paid more of its revenue in dividends than 75% of its peers. The public interest only requires that SCE&G be authorized the lowest possible reasonable rate consistent with the maintenance of adequate service. *Atlantic Refrigeration Co. v. Public Service Commission of the State of New York*, 360 U.S 378, 79 S. Ct. 1246, 3 L. Ed. 2d 1312 (1959). A reduction of 13% in rates will not affect SCE&G’s creditworthiness, and the resulting revenues will enable SCE&G to provide its customers adequate service.

Without waiving its right to argue for a greater reduction in SCE&G's rates at trial, SCEUC moves for an order reducing rates by the recommended minimum of thirteen (13) percent. The purpose of the BLRA was to allow SCE&G to recover the prudently incurred costs of its nuclear construction while protecting its customers from responsibility for imprudent financial costs. Shareholders have benefitted disproportionately from the failed nuclear construction. Ratepayers are entitled to protection from any further injury from SCE&G's failures. Any further delay in reducing SCE&G's rates would be arbitrary and capricious.

For the foregoing reasons, the South Carolina Energy Users Committee herewith moves for an order pendente lite,

- a. reducing rates for all of SCE&G's customer classes by thirteen (13) percent pending the final decision by the Commission in the within docket; and
- b. for such other and further relief as the Commission deems just and equitable.



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Attorney for the South Carolina Energy
Users Committee

Columbia, South Carolina
April 6, 2018

CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that (s)he has this date served one (1) copy of the pleading(s) indicated below by electronically mailing same and addressed as shown below:

RE: Request of South Carolina Office of Regulatory Staff for
Rate Relief to SCE&G Rates Pursuant to
S.C. Code Ann. § 58-27-920

Docket No.: 2017-305-E

PARTIES SERVED:

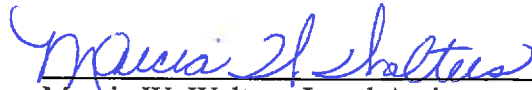
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PLEADING:

NOTICE OF MOTION AND MOTION

April 6, 2018



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